

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5662 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JINIBEN JALBHAI PANTHAKI

Versus

GOVINDBHAI DURLABHBHAI

Appearance:

MR JITENDRA M PATEL for Petitioners
SERVED for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/02/98

ORAL JUDGEMENT

Present petition is directed against the judgment and order dated 3rd March, 1981 passed by the Deputy Collector, Navsari in R.T.S. Appeal No. 14 of 1980 confirmed by the Collector, Valsad on 31st August, 1981 by the judgment and order passed in R.T.S. Revision No. 22 of 1981 and further confirmed by the State Government on 8th July, 1986 in Revision Application No. SRD/RTS/26/82 renumbered as 208/84 preferred before it. The facts leading to the present petition are as under :

2. Four pieces of land bearing Survey No. 452; 454/1/A; 444/1 and 444/2 situated at village Deshara in Taluka Gandevi of Valsad District belonged to one Palanji Panthki. On demise of said Palanji Panthki, the lands devolved upon Mervanji, the son of Palanji. It further devolved upon one Edulji and Jalbhai, sons of Mervanji. On 8th February, 1961, Edulji made gift of the lands survey Nos. 452 and 454/1/A in favour of Jalbhai. Mutation entry being Entry No. 545 to the said effect was made in the revenue records on 25th March, 1961 and was also certified. Said Shri Jalbhai died on 1st April, 1966 and all the four pieces of the lands devolved upon his widow Jiniben, petitioner No. 1 herein. The mutation entry being Entry No. 839 to that effect was made in the revenue records on 10th June, 1966 and was certified. On 26th January, 1967, names of one Alooben and Jamshedji (petitioners nos. 2 and 3 herein) were entered into the revenue records alongwith Jiniben and mutation entry being Entry No. 859 was made which was certified on 1st March, 1967.

3. Some time in the year 1974, respondent No. 1 herein claimed to be the tenant of the lands Survey No. 454/1/A admeasuring about 7 acres 30 gunthas and part of survey No. 452 admeasuring 30 gunthas. Proceedings initiated under section 70 (b) of the Tenancy Act was dismissed by the Mamlatdar on 23rd October, 1974. The order dated 23rd October, 1974 was confirmed in revision by the Collector on 12th February, 1976 and by the Gujarat Revenue Tribunal on 24th December, 1976. The writ petition being Special Civil Application No. 469 of 1977 preferred before this Court was dismissed on 15th April, 1980 and the appeal being Letters Patent Appeal No. 92 of 1980 preferred against the said order, before the Division Bench of this Court, was also dismissed on 23rd June, 1980. In the meantime, brother of respondent No. 1 instituted Regular Civil Suit No. 191 of 1980 for possession of the lands in question wherein injunction was refused. Appeal preferred against the said order

refusing interim injunction was also dismissed. On 30th October, 1980, the petitioner obtained Permission for N.A. Use of the lands in question. Said order dated 30th October, 1980 was challenged by respondent No. 1 which was rejected on 23rd March, 1981 and writ petition being Special Civil Application No. 1471 of 1981 preferred against the order dated 23rd March, 1981 was rejected on 14th June, 1981. Application for review being Miscellaneous Civil Application No. 338 of 1981 was also rejected on 27th June, 1981. Letters Patent Appeal No. 241 of 1981 challenging the order made on the writ petition was also dismissed on 15th September, 1981. Pending the above proceedings, on 23rd June, 1975, the petitioners agreed to sell the lands in question to one Jal Cooperative Society and sale deed was executed on 8th January, 1981. Since then, the lands in question have been handed over to the said CoOp. Society. The construction has been made on the said pieces of lands and the third party interest has also been created. Respondent No. 1, thus, having failed in his attempt to claim the lands in question as tenant thereof on 10th June, 1980 challenged the mutation entry No. 859 before the Mamlatdar. Respondent No. 1 contended that the said entry was made in contravention of the law and that thereby, his tenancy right was adversely affected. The challenge was contested by the present petitioners. It was argued that the respondent No. 1 had no locus standi to challenge the said entry. That the entry was made in accordance with law; that the challenge was grossly belated and in the meantime, third party interest was created in respect of the lands in question. The challenge made by respondent No. 1 was accepted and the entry No. 859 was cancelled by the Deputy Collector. Said order was further confirmed by the Collector and the State Government as referred to hereinbefore. Feeling aggrieved, the petitioners have preferred this petition before this Court.

4. It is evident that the respondent No. 1 has claimed his right of tenancy only in respect of the lands survey No. 454/1/A admeasuring 7 acres and 30 gunthas and part of land survey No. 452 admeasuring 30 gunthas. Respondent No. 1 has failed in his said claim. Thus, respondent No. 1 cannot be said to have any right of tenancy on the lands in question or on other two pieces of the lands or on rest of the land of Survey No. 452. In fact, respondent No. 1 never claimed right of tenancy over the lands bearing survey No. 444/1 and 444/2. Thus, in my view, respondent No. 1 had no locus standi to challenge the mutation entry No. 859 made in respect of the above referred four pieces of lands. His

challenge to the said mutation entry No. 859 should have, therefore, been rejected on that ground alone. Further, it is obvious that the challenge to the mutation entry No. 859 is grossly belated. The entry was made on 26th January, 1967 and the same has been challenged in the year 1980 by respondent No. 1 after he failed in his claim of tenancy rights. Though these contentions were raised before the authorities below, the authorities below have failed to consider the same. Instead, the authorities below have held that no notices were issued as required under section 135D of the Bombay Land Revenue Code (hereinafter referred to as the "Code") and the entry has been set aside on that ground alone. I am afraid, the authorities below were not right in examining whether proper notices were issued under section 135D of the Code or not after a long delay of more than 13 years, more particularly pursuant to the challenge made by the respondent No. 1 who had no right, title or interest over the lands in question. In my view, therefore, the orders made by the authorities below annexed to the petition at Annexures "I", "J" and "K" suffer from the vice of non-application of mind and require to be quashed and set aside.

5. Petition is, therefore, allowed. The impugned orders dated 3.3.1981; 31.8.1981 and 8.7.1986 at Annexures "I", "J" and "K" respectively are quashed and set aside. Rule is made absolute accordingly. There shall be no order as to costs.

Vyas